



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case References** : **LON/00AY/HMF/2022/0069**

**Property** : **Flat B 28 Edgely Road, London, SW4  
6ER**

**Applicants** : **Mr J A Hall**

**Representative** : **In person**

**Respondent** : **Mr N D Thomas**

**Representative** : **Did not appear and was not represented**

**Type of  
Application** : **Application for a rent repayment order**

**Tribunal Members** : **Judge F J Silverman MA LLM  
Mr S Wheeler MCIEH CEnvH**

**Date of hearing** : **30 September 2022**

**Date of Decision** : **30 September 2022**

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**DECISION**

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## **Decision of the Tribunal**

- 1. The Tribunal makes a rent repayment order against the Respondent and in favour of the Applicant in the sum of £1,941.42.**
- 2. Additionally, the Tribunal makes an order against the Respondent and in favour of the Applicant in the sum of £300 in repayment to him of his application and hearing fees.**
- 3. The total award to be paid by the Respondent is therefore £2,241.42.**

## **Reasons**

- 1 The Applicant made an application to the Tribunal under section 41 of the Housing and Planning Act 2016 (“the Act”) requesting a rent repayment order against the Respondent in respect of the property known as Flat B 28 Edgely Road , London, SW4 6ER (the property) for the period of his occupation of the property (as detailed below) during which time the property was unlicensed.
- 2 Rent for the property was payable to the Respondent as landlord and freeholder.
- 3 The hearing of this matter took place before a Tribunal sitting in London on 30 September 2022 at which the Applicant appeared in person and the Respondent did not appear and was not represented. Shortly before the date of the hearing the Respondent had contacted the Applicant and the Tribunal to say that he would not be attending the hearing in person because he had a medical appointment on the day fixed for the hearing. He requested us to proceed with the hearing in his absence. No medical evidence was provided in support of this statement and no application for an adjournment was made.
- 4 Both parties had filed bundles of documents for the hearing including, in the Respondent’s case, a skeleton argument. Prior to the hearing the Tribunal had read all of the documents submitted by each party. Relevant documents are referred to below.
- 5 The Tribunal understands that the subject property comprises a flat which, during the entire time to which this claim relates, was occupied by three people from separate households who shared common facilities.
- 6 With effect from 9 December 2021 the property became subject to an additional licensing scheme run by Lambeth London Borough Council. It is common ground between the parties that the property did not have a licence between 9 December 2021 and 14 April 2022 when Lambeth London Borough Council granted the

- Respondent a temporary exemption (TEN) (see page R4). The application for the TEN was made on 17 March 2022.
- 7 Confirmation from the local authority that the property did not have a licence during the relevant time is shown at pages A57 and A95.
  - 8 A landlord who fails to obtain a valid licence is committing a criminal offence under s72(1) Housing Act 2004.
  - 9 Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable to carry out a physical inspection of the property but had the benefit of viewing the property and its location via Google.
  - 10 In his statement to the Tribunal the Respondent stated that he had not known that the local authority had changed the rules so that the property had become subject to additional licencing and that he took action when he became aware of the change. However, page R14 of the Respondent's own documents shows that Lambeth Council understood the Respondent to have been aware of the scheme since December 2021.
  - 11 The Respondent is a professional landlord who on his own admission has many tenants including others in the London Borough of Lambeth and who has a professional agent to assist with the management of the properties. Given this background the Tribunal does not accept that his pleaded ignorance of the law constitutes a reasonable excuse for not applying for a licence or TEN at the appropriate time.
  - 12 Correspondence between the parties demonstrates that the Respondent persistently asked the Applicant and his co-tenants to increase their rent payments over and above the contractual sum and encouraged them to desist from pursuing an application to the Tribunal with a threat of claiming costs against them.
  - 13 The documentation before the Tribunal included statements from the Respondent's accountant and property manager neither of whom were present at the hearing and neither of whom had any direct connection with the licence application. The Tribunal had read their statements but was unable to place great reliance on them because their contents had not been subjected to cross examination.
  - 14 The Respondent's application for a TEN was not included in his bundle but it is understood to have been submitted to the Council on 17 March 2022. The period to be taken into account in calculating the award to the Applicant is therefore 09 December 2021 to 16 March 2022 (both dates inclusive).
  - 15 The Applicant has demonstrated to the Tribunal's satisfaction that the property required a licence during the whole period covered by this application and that it did not have one.
  - 16 The Tribunal was therefore, satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72 (1) of the Housing Act 2004 (as amended), namely, that, he had been in control or management of an unlicensed house.
  - 17 It follows that the Tribunal was also satisfied that it was appropriate to make a rent repayment order under section 43 of

the Housing & Planning Act 2016. The Applicant makes a claim for the period 09 December 2021 to 16 March 2022. Any award made by the Tribunal could not exceed the total rent received by the Respondent for this period of time.

- 18 As to the amount of the order, the Tribunal had regard to the following circumstances under section 44(4) of the Act.
- 19 The Respondent is a property professional who employs a management company to carry out routine work. He should therefore have been aware of his responsibilities as a landlord and of the need to licence the property.
- 20 There is no evidence that the Respondent had previous convictions of this kind or that the Council had considered the Respondent's offence to be sufficiently serious to prosecute it. However, in assessing the award to be made to the Applicant, the Tribunal does have regard to the Respondent's conduct including making unfounded allegations about the Applicant's behaviour, failing promptly to repair faults at the property, and threatening the Applicant with eviction and legal costs.
- 21 The Tribunal did not have details of the Respondent's financial circumstances but no formal plea of financial hardship was made on his behalf. A Tribunal order requires payment in full and not by instalments.
- 22 The Applicant had not claimed any benefits during the period of his occupation.
- 23 There is no substantiated evidence of any misconduct on the part of the Applicant.
- 24 The Applicant paid £650 per month as rent which sum was inclusive of all outgoings (page A216). Evidence of payment was produced to the Tribunal (page A245) and was not disputed by the Respondent.
- 25 In assessing the award the Tribunal also had regard to the guidelines set out in *E Acheanpong v Roman & Others* [2022] UKUT 239 (LC).
- 26 The period for which rent must be repaid by the Respondent is 09 December 2021 to 16 March 2022 (3months 7 days). This amounts to £2,099,59.
- 27 The Respondent's conduct during the period both before and since the Applicant raised with him the question of a licence has included slowness in effecting repairs to the property, threats of eviction and of legal costs, none of which was justified in these circumstances and which is unbecoming behaviour for a professional landlord. In the light of this conduct the Tribunal considers it is appropriate to make the full award to the Applicant
- 28 From that sum the Tribunal deducts the sum of £158.17 representing the Applicant's share of the gas, electricity and internet costs for the flat during the relevant period. This has been calculated from invoices submitted by the Respondent (pages R15-29) which show that the monthly total for these commodities during the relevant time was £146 per month ie £48.67 per tenant. The landlord's own mortgage is not a deductible expense.

29 The Applicant is also requesting the Tribunal to order the Respondent to repay the application and hearing fees (£300). This application is granted.

30 Relevant Law  
Making of rent repayment order

Section 43 of the Housing and Planning Act 2016 (“the Act”) provides:

“(1) The Second-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

- (a) section 44 (where the application is made by a tenant);
- (b) section 45 (where the application is made by a local housing authority);
- (c) section 46 (in certain cases where the landlord has been convicted etc).

Amount of order: tenants

16. Section 44 of the Act provides:

(1) Where the Second-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed

an offence mentioned in row 1 or 2 of the table in section 40(3)  
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

the amount must relate to the rent paid by the tenant in respect of the period of 12 months ending with the date of the offence

a period not exceeding 12 months, during which the landlord was committing the offence

(3)The amount that the landlord may be required to repay in respect of a period must not exceed—

(a)the rent paid in respect of that period, less

(b)any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4)In determining the amount the tribunal must, in particular, take into account—

(a)the conduct of the landlord and the tenant,

(b)the financial circumstances of the landlord, and

(c)whether the landlord has at any time been convicted of an offence to which this Chapter applies.”

**Name:** Judge Frances Silverman  
as Chairman

**Date:** 30 September 2022

Note:  
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the Second-tier Tribunal at the Regional office which has been dealing with the case. Under present Covid 19 restrictions applications must be made by email to [rplondon@justice.gov.uk](mailto:rplondon@justice.gov.uk).

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.